

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, DC 20554**

In the Matter of:	)	
	)	
Rules and Regulations Implementing the	)	CG Docket No. 02-278
Telephone Consumer Protection Act of 1991	)	DA 04-3185, 3186, 3187
	)	

**COMMENTS OF VOICE MAIL BROADCASTING CORPORATION**

**I. INTRODUCTION**

Voice Mail Broadcasting Corporation (VMBC) is a leading provider of marketing services to Fortune 500 companies throughout the country. VMBC delivers carefully crafted and professionally recorded verbal messages designed to enhance its clients' customers' experiences and build loyalty.

VMBC conducts its activities at all times with the utmost care to comply with applicable federal and state laws, including the Telephone Consumer Protection Act. VMBC only delivers its recorded messages in situations compliant with the FCC's restrictions found at 47 CFR § 64.1200(a)(2) and (b).

VMBC submits these comments to urge the Commission to specify that the TCPA's regulatory structure is the sole restriction applicable to interstate recorded telephone messages. It is in the interest of businesses, consumers and regulators that a uniform scheme regulation apply to its activities. Because the TCPA restricts these messages and does not allow unsolicited commercial telephone messages, businesses will carefully consider the value of messages to its consumers and protect consumers from unwanted invasions into their privacy.

**II. COMMENTS**

1. **DA04-3187:** The FCC should preempt North Dakota's state restrictions regarding delivery of recorded messages to insure consistent uniform treatment of VMBC's customers' clients' messages.

The FCC has asked for comments regarding whether it should preempt certain provisions of North Dakota state law which prohibit use of prerecorded messages to conduct political polling. North Dakota is one of several states which has passed state law more restrictive than the TCPA regulations regarding delivery of recorded messages including restrictions on political calls, calls to established customers, calls by nonprofit organizations and market research calls.

North Dakota's law is similar to several other state laws which do not allow the same sorts of calls allowed by the FCC. Many states do not allow businesses to place recorded calls to their customers, many states do not allow nonprofit organizations to contact potential donors using recordings, and several states do not allow political candidates to use recorded voice messages to get out the vote.

While these state laws may be important with regard to intrastate calls, the patchwork quilt of varying enforcement created by the restrictions results in substantial uncertainty for consumers, regulators and businesses which must wonder whether the differing laws apply to interstate calls.

Although the FCC, Congress and several courts have expressed the opinion that these varying state laws do not apply to interstate calls, only one state statute regulating recordings is specifically limited to callers within the state to consumers in that state. N.J. Stat. §48:17-18. Remaining states often threaten enforcement of differing state laws resulting in chilling of VMBC's legal activities.

VMBC has often had to provide state regulators information regarding its compliance with the TCPA.

It is important that the FCC take this opportunity to end the frustration caused by varying state schemes, specifically limiting their application to intrastate calls. As the drafters of the TCPA stated when the TCPA was passed: "Section 227(e)(1) clarifies that the bill is not intended to preempt State authority regarding intrastate communications except with respect to the technical standard under ' 227(d) and subject to ' 227(e)(2). Pursuant to the general preemptive effect of the Communications Act of 1934, State regulation of interstate communications, including interstate communications initiated for telemarketing purposes, is preempted." 137 Cong. Rec. S. 18781 (emphasis added).

2. **DA04-3185, 3186:** The FCC should preempt New Jersey's definition of established business relationship as applied to interstate calls to insure that VMBC's clients can contact their consumers in ways which do not infringe upon those consumers' privacy. The FCC should establish one do-not-call list applicable to interstate calls and preempt the Florida do-not-call list.

Similarly, the FCC should end confusion caused by varying state definitions of the term "established business relationship". While New Jersey's definition is perhaps the most confusing of all the states, many other states have adopted definitions different than the federal 3 month/18 month standard found in the TCPA and Telemarketing Sales Rule, 47 CFR §64.1200(f)(3) and 16 CFR §310. 2(n), respectively.

Many states do not account for the relationship created when a consumer inquires about a business's products, and some do not consider the fact that a consumer might welcome calls from trusted businesses, at all. Indiana, for example, forces consumers to make an "all-or-nothing" choice when they consider adding their name to the state do-not-call lists. In. Code. §24-4.7-1-1. Consumers are not permitted to allow calls from businesses with which they have an ongoing relationship under Indiana law.

On the other hand, Indiana law does allow newspapers to call consumers even if they are on the state do-not-call list. Id. This content-based exemption calls into question the ability of this statute to protect consumers, at all.

Consumers, businesses, and regulators are obviously better served by a uniform national definition and a uniform national do-not-call list. State regulators are not without power to protect their citizens under such a system as they can enforce both the TCPA and the TSR in cooperation with the FCC and the FTC. 47 USC §227(f) and 16 CFR §310.7, respectively.

The FCC should take this opportunity to preempt these varying state laws, reduce consumer confusion, and improve protection of consumer privacy rights damaged by varying state standards.

### **III. CONCLUSION**

Because it is in the best interest of businesses, consumers, and regulators that a uniform regulatory system apply to interstate telephone calls, VMBC urges the Commission to preempt North Dakota's law which imposes more restrictive rules on delivery of recordings. VMBC also urges the Commission to preempt other state laws which frustrate and conflict with the restrictions set forth in the TCPA and its accompanying Regulations.

Please contact me if you have further questions regarding this comment.

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President, Voice Mail Broadcasting Corp.